

### **REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on September 10, 2003, and the references cited therewith.

Claim 5 is amended, no claims are canceled. New claims 25-28 have been added; as a result, claims 1-10, 12-22 and 25-28 are now pending in this application.

#### **Election of Species**

The Examiner grouped figures from the application into two groups and labeled the groups as species A and B. Applicant respectfully submits that, based on the prior art of record so far, each of the Examiner's designated Species A1-A6 and B1-B6 are patentably distinct.

The Examiner requested that Applicant elect a single disclosed species from each group for prosecution on the merits to which claims will be restricted if no generic claim is finally held to be allowable. Applicant elects Species A1 and B3. Claims 1-10 and 12-22 read on the elected species.

New claim 25 reads on Species B1-B3. New claims 26-28 read on Species B3.

#### **Applicant as Lexicographer**

In paragraph 14 of the Office Action, the Examiner stated that he "is unaware of any desire – either expressly or implicitly - by Applicant to be his own lexicographer and to define a claim term to have a meaning other than its ordinary and accustom meaning" and that "if Applicant "has either (a) already used lexicography or (b) wishes to use lexicography and therefore (under either (a) or (b)) desires a claim limitation to have a meaning other than its ordinary and accustom meaning, the Examiner respectfully requests Applicant in his next response to expressly indicate the claim limitation at issue and to show where in the specification or prosecution history the limitation is defined." The Examiner goes on to state that failure to do so will be considered a desire by Applicant to forgo lexicography in this application and to continue having the claims interpreted with their broadest reasonable interpretation.

The Examiner further state that he was making “an express request for clarification of how Applicant intends his claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicant is not inadvertently overlooked by the examiner.” Applicant appreciates this attempt on the part of the Examiner to avoid confusion but is concerned that any such attempt to provide a separate dictionary of claim terms would confuse the issue more than it would help. An example is given in the response to the indefiniteness rejection of claim 5 below.

Therefore, in an attempt to meet the Examiner’s request under C.F.R. 1.111(b), Applicant asserts that he had every intention of being his own lexicographer when drafting the specification and the initial set of claims. Claim terms defined in the specification are to be interpreted as defined in the specification. When a claim term is not defined in the specification, that term should be read as it would be interpreted by one skilled in the art. As noted in the MPEP,

When not defined by applicant in the specification, the words of a claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art. >*Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001)(explaining the court’s analytical process for determining the meaning of disputed claim terms); *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999)(“[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning.”).

MPEP 2111.01. Applicant will work with the Examiner in clarifying any claim terms when the Examiner is uncertain how the term is to be interpreted.

Applicant appreciates the Examiner’s statement of how he is interpreting certain terms as given in paragraph 15 of the Office Action but reserves the right to point out different shadings or even different interpretations of those terms during prosecution of the patent application. Oftentimes, the context in which a claim term is used provide a nuance to the dictionary definition. Although, during examination the claims must be interpreted as broadly as their terms reasonably allow, that interpretation must be tempered by the context in which the term is used. The court in *Hyatt* stated that “during examination proceedings, claims are given their broadest reasonable interpretation *consistent with the specification*.” *In re Hyatt*, 211 F.3d 1367, 1372, 54 U.S.P.Q.2D (BNA) 1664, 1667 (Fed. Cir. 2000) (emphasis added) (“During

examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification." ; citing *In re Graves*, 69 F.3d 1147, 1152, 36 U.S.P.Q.2D (BNA) 1697, 1701 (Fed. Cir. 1995); *In re Etter*, 756 F.2d 852, 858, 225 U.S.P.Q. (BNA) 1, 5 (Fed. Cir. 1985) (en banc).).

One should always, therefore, turn to the specification for nuances in the definition of the claim term, since it is the context in which the term is used that informs those skilled in the art as to the meaning of a term.

#### §112 Rejection of the Claims

Claim 5 was rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner stated that it is unclear if Applicant intends the "terminal" in "terminal interface" as recited in claim 5 to be the terminal in claim 1 or a different (i.e. computer) terminal.

Applicant directs the Examiner's attention to Fig. 7 and the discussion at p. 12, lines 7-22 for a description of the term "terminal interface" (see "terminal interface 92"). Applicant is uncertain if this would be considered by the Examiner as an attempt by Applicant to be his own lexicographer but respectfully submits that the description of terminal interface 92 at p. 12 and elsewhere in the specification should clarify that the terminal in question is a terminal for receiving vehicles pulling trailers and not a computer terminal. This interpretation is supported by the fact that although the term "terminal interface" is used three times in the specification, it never is used to describe an interface to a computer display.

Applicant respectfully submits that claim 5, as written, does particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Reconsideration is respectfully requested.

#### §102 Rejection of the Claims

Claims 1, 4-9 and 12-22 were rejected under 35 USC § 102(e) as being anticipated by Keillor et al. (U.S. 5,917,433) ("Keillor").

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *M.P.E.P. § 2131*.

Anticipation focuses on whether a claim reads on a product or process disclosed in a prior art reference, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter. *PPG Industries, Inc. V. Guardian Industries Corp.*, 75 F.3d 1558, 37 USPQ2d 1618 (Fed. Cir. 1996). The Examiner is required to provide the best references and clearly describe how they include each of the elements in the claimed inventions. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. 37 *CFR 1.106(b)*.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *M.P.E.P. § 2131*.

As the Examiner noted, Keillor describes a trailer tracking program. As can be seen in Fig.1 of Keillor, and as described at col. 5, line 50 through col. 7, line 65, an asset monitor 14 is mounted to each container. Each asset monitor communicates with a remotely located central station 12 "so as to provide the central station with information relating to the container with which the asset monitor is associated". Col. 5, lines 62-67. Asset monitor 14

preferably includes a sensor interface 20, such as a multi-port input/output interface, for providing communications with at least one, and more commonly, several sensors 22 which are associated with [the container]. Each sensor is adapted to monitor a predetermined condition or event and to provide a predetermined type of sensory signals. For example, the sensors can include temperature sensors disposed within predetermined portions of the trailer in order to monitor the temperature within the respective portions of the trailer.

Col. 6, line 62 through col. 7, line 4. Door position sensors and other types of sensors, including a GPS receiver 26, are also described. A first communications link between each asset monitor 14 and the central computer 12 communicates the conditions sensed by the sensors. Based upon the information provided via the first communications link, the central station can monitor the position of the trailer and status of the trailer and its contents. Col. 8, lines 35-38.

In contrast, Applicant describes, and claims in claim 1, a trailer transport system having a computer system and a plurality of terminals. Each terminal includes a terminal management system communicatively coupled to the computer system. The terminal management system “pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer’s transportation status.” Claim 1.

Applicant acquiesces to the Examiner’s statement that trucking operations typically operate out of more than one terminal. That is, trucks, as well as other vehicles, often travel from one location on a transportation route to another. The Examiner has failed, however, to show a teaching in Keillor of equipping each terminal with a terminal management system that “pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer’s transportation status” as described by Applicant and claimed in claim 1. The Examiner has, therefore, failed to establish a *prima facie* showing of anticipation for claim 1.

In addition, claims 4-9 are dependent on claim 1 and inherit all the limitations of claim 1. The Examiner has, therefore, failed to establish a *prima facie* showing of anticipation for claims 4-9. Reconsideration and allowance of claims 1 and 4-9 is respectfully requested.

Similarly, the Examiner has failed to show a teaching in Keillor of associating a terminal management system with each terminal, communicatively coupling such a system to a computer connected to other terminal management systems and tracking, through the terminal management system at each terminal, the arrivals and departures of trailers at their respective terminals. Claim 12. The Examiner has, therefore, failed to establish a *prima facie* showing of anticipation for claim 12.

In addition, claims 13-15 are dependent on claim 12 and inherit all the limitations of claim 12. The Examiner has, therefore, failed to establish a *prima facie* showing of anticipation for claims 13-15. Reconsideration and allowance of claims 12-15 is respectfully requested.

Furthermore, the Examiner has failed to show a teaching in Keillor of associating an access restriction system with each terminal, communicatively coupling such a system to a computer connected to other access restriction systems and tracking, through the access restriction system at each terminal, the arrivals and departures of trailers at their respective



terminals. Claim 16. The Examiner has, therefore, failed to establish a *prima facie* showing of anticipation for claim 16.

Claims 17-22 are dependent on claim 16 and inherit all the limitations of claim 16. The Examiner has, therefore, failed to establish a *prima facie* showing of anticipation for claims 16-22. Reconsideration and allowance of claims 16-22 is respectfully requested.

In his rejection of claims 1, 4-9 and 12-22, the Examiner equated terminal interface 92 to sensor interface 20. Applicant respectfully submits that the sensor interface is used to connect a series of sensors to asset monitor 14, while terminal interface 92 is used to connect the trailer tracking system to computer system 12. This difference is clearly stated in claims 5 and 6 as filed. Reconsideration of claims 1, 4-9 and 12-22 is respectfully requested.

#### §103 Rejection of the Claims

Claim 2 was rejected under 35 USC § 103(a) as being unpatentable over Keillor in view of Nijenhuis (PCT/NL98/00128).

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d, 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). The references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *M.P.E.P.* § 2142 (citing *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)). In considering the disclosure of a reference, it is proper to take into account not only specific teachings of the

reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. *M.P.E.P.* § 2144.01 (citing *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968)). However, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *M.P.E.P.* § 2143.01 (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

In order to take into account the inferences which one skilled in the art would reasonably make, the examiner must ascertain what would have been obvious to one of ordinary skill in the art at the time the invention was made, and not to the inventor, a judge, a layman, those skilled in remote arts, or to geniuses in the art at hand. *M.P.E.P.* § 2141.03 (citing *Environmental Designs, Ltd. v. Union Oil Co*, 713 F.2d 693, 218 USPQ 865 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984)).

The examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

*M.P.E.P.* § 2141.03.

Claim 2 is dependent on claim 1 and inherits all the limitations of claim 1. As noted above, the Examiner has failed to show a teaching in Keillor of equipping each terminal with a terminal management system that "pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer's transportation status" as described by Applicant and claimed in claim 1. Nijenhuis provides no such teaching. Furthermore, the loading platform described in Nijenhuis is not the loading pad described by Applicant and claimed in claim 2. Since limitations of claim 2 cannot be found in

either of the cited references, the Examiner has failed to establish a *prima facie* showing of obviousness for claim 2. Reconsideration of claim 2 is respectfully requested.

Claim 3 was rejected under 35 USC § 103(a) as being unpatentable over Keillor. In his rejection of claim 3 the Examiner stated that, although Keillor does not directly disclose a reservation system, he was taking Official Notice that reservation systems for tractor-trailers are old and well known in the art. Applicant respectfully traverses the Examiner's taking of Official Notice. The Examiner has failed to produce a reference which teaches or suggests the use of a reservation system in the manner described by Applicant and claimed in claim 3. Applicant requests that the Examiner produce documentary evidence supporting his taking of Official Notice in the next Office action if the rejection is to be maintained. Reconsideration of claim 3 is respectfully requested.

Claim 10 was rejected under 35 USC § 103(a) as being unpatentable over Keillor. In his rejection of claim 10 the Examiner stated that, although Keillor does not directly disclose a gate and gate controller, he was taking Official Notice that gate and gate controller are old and well known in the art. Applicant respectfully traverses the Examiner's taking of Official Notice. The Examiner has failed to produce a reference which teaches or suggests the use of a gate and gate controller in the manner described by Applicant and claimed in claim 10. Applicant requests that the Examiner produce documentary evidence supporting his taking of Official Notice in the next Office action if the rejection is to be maintained. Reconsideration of claim 10 is respectfully requested.



Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6909 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

DOUGLAS J. MILLER ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6909

Date February 10, 2004 By Thomas F. Brennan  
Thomas F. Brennan  
Reg. No. 35,075

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 10th day of February, 2004.

PATRICIA A. HULTMAN

Name

Patricia A. Hultman

Signature